IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 37714 of 2004(M)

AGAINST THE ORDER DATED 01/01/05 IN EP 159 2004 IN OS.342/2004 of PRL.M.C., KOCHI

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PETITIONER:

SIVADASAN, S/O. KESAVAN,
RESIDING AT POLAPARAMBIL HOUSE,KUMBALANGHI,
SOUTH KOCHI-682 007.

BY ADV. SRI.VARGHESE PARAMBIL

RESPONDENTS:

CHIRAYIL CHITTIES,
CHANDIROOR, REP. BY ITS MANAGING PARTNER,
C.P. VIJAYAKUMAR, S/O. PETER, CHIRAYIL HOUSE,
ERAMALLOOR, CHERTHALA TALUK.

BY ADV. SRI.JOSEPH EDAKKATT
SMT.MINI.V.A.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/05/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE RULE 66 NOTICE DT.22.11.03.

EXT.P2 : TRUE COPY OF OBJECTION IN THE RULE 66 NOTICE.

EXT.P3 : TRUE COPY OF THE EP NO.156/04 DT.3.7.04 FILED BY RESPONDENT BEFORE THE HON'BLE MUNSIFF'S COURT, KOCHI.

EXT.P4 : TRUE COPY OF DRAFT PROCLAMATION DT.30.11.04 FILED BY RESPONDENT.

EXT.P5 : TRUE COPY OF HANDWRITTEN COPY OF THE ORDER SHEET CONTAINING THE ORDER FOR SALE ON 1.1.05 OF THE MUNSIFF'S COURT, KOCHI.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 37714 OF 2004

Dated this the 29th day of May, 2007

JUDGMENT

Ext.P5 order approving the draft sale proclamation submitted by the decree holder directing sale, is under challenge in this proceedings under Article 227 of the Constitution instituted by the judgment debtor. The claim in the Execution Petition was around Rs.50,000/- and this Court while granting stay imposed a condition that the petitioner shall deposit a sum of Rs.5,000/- within one month and shall continue to remit like amounts for the four subsequent months. Mr.Jose Arayankunnel, counsel for the petitioner submits that the court below was not at all justified in settling the draft sale proclamation which was produced on 13.11.04 on the same day without affording an opportunity to the petitioner to object to the same. I cannot agree. It is seen from Ext.P5 itself that on an earlier draft sale proclamation the petitioner was given notice under Rule 66 of order XXI and it was considering his objections to the valuation shown in that draft that the Court passed an order on 07.10.04 for production of fresh proclamation. The decree holder delayed the matter and it is after six adjournments that he could produce the draft proclamation of 13.11.04. The court below has obviously considered that draft and ensured that the same is in tune with the

objections earlier raised by the petitioner to the first draft. Mr.Jose would now submit that in all probability the decree debt has been completely discharged. I also feel that the only relief which the petitioner can aspire for his instalment facility in the matter of liquidating the debt. There is no contest for the respondents. I therefore dispose of the writ petition itself permitting the petitioner to pay off the decree debt in equal monthly instalments of Rs.5,000/- commencing from the 15th of June 2007. If the petitioner defaults remittance of any instalments, the order of stay presently passed will stand vacated and under such eventuality the court below will be justified in selling the property as per the proclamation presently settled for recovery of the balance amount which is due under the decree.

PIUS C. KURIAKOSE, JUDGE

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